

## **Death, Dignity and Moral Status**

**Abstract:** Ronald Dworkin and David Velleman fail in their attempts to justify hastening the death of patients on the grounds that their dignity demands their demise. I argue that not only do their projects fail internally for the dignity and interests that they're trying to protect can't justify hastening some deaths, but their conceptions of dignity can't even provide reasons why we should cure the extremely demented who are reduced to childlike or comatose states. I argue instead for an account of dignity more in line with the tradition that our value depends upon the kind of entity we are and thus what ends we ought to realize. Our moral status will be determined by kind of life we can live if we're healthy and functioning properly rather than be dependent upon our present or earlier manifestation of autonomy, rationality and personhood.

**Keywords:** Dignity, Death, Interests, Velleman, Dworkin

## Introduction

Ronald Dworkin and David Velleman attempt to justify euthanasia and physician-assisted suicide by appealing to considerations of patient dignity. Dworkin (1993) insists that respecting dignity involves acknowledging patients' earlier autonomously produced interests that are retained even when unrecognized by those suffering dementia. Velleman (1999) likewise argues for hastening the deaths of some patients on the grounds that mind destroying injuries and diseases degrade patients as they undermine their rationality-based dignity. I argue that not only do their projects fail internally for the dignity and interests that they are trying to protect can't do the lethal work they want them to do, but their conceptions of dignity aren't even able to provide reasons to cure the extremely demented who are reduced to childlike or comatose states.

The problem for Velleman's account is that a mentally debilitating disease has so greatly reduced the patient's rationality-based value that there is no longer sufficient value with which to be concerned. The patient's rationality has been reduced to the point that it doesn't make sense to claim that he still possesses a great value that is being continuously degraded. If there isn't any such continuous degradation, then it makes little sense to claim that the degradation can only be halted by hastening his death. Moreover, Velleman's insistence that an individual's interests only matter if their possessor is valuable, means that the loss of rationality-based value removes any weighty reason why the diseased individual's destroyed rationality should be restored if it could be. Dworkin's theory fails to realize that the earlier autonomously produced interests in leading a certain life that allegedly require an early death after dementia strikes do not actually survive the brain destruction wrought by Alzheimer's or other mind destroying pathologies. Dworkin's impoverished account of interests, which recognizes only "critical interests" that were autonomously generated prior to the disease or "experiential interests" subsequently manifested by the demented, provides no basis for an interest in a cure that is there in the absence of autonomous capabilities or a conscious wish to be restored to health.

A more promising approach is to recognize that we have welfare interests based on the kind of being we are. There is a certain healthy development and functioning that is proper for us. That life involves the exercise of rational and affective capacities no other known living creatures possess. They bestow upon us a value that isn't shared by any other creatures, even if those creatures are intrinsically no different from our mindless and minimally minded young or brain-damaged adolescents and adults. Due to the fact that we are instances of a kind of entity that can lose out on lives of great value, death harms us to a degree that it does not harm any other kind of living organism. Given the great heights of the benefits and the extreme depths of the losses that creatures of our kind can undergo, our moral status is much greater than that of any other living being. This is true even if the loss is either overdetermined by dementia and death or the loss that death would have brought is preempted by dementia.

My contention is that even our mindless conspecifics have an interest in healthy development. That interest always exists, as health is a necessary condition for flourishing. It explains why our death is a great harm and why we would be harmed if not cured of our dementia. Accounts that find our dignity in our autonomous personhood (Velleman) or earlier capacities to autonomously generate interests (Dworkin) can't account for the moral status and treatment intuitively owed those who never were or are no longer rational persons or consciously interested in their dignity. They can't explain why if there was a scarce serum that could either transform brain-damaged adults into persons or bestow personhood upon healthy kittens, the serum goes to the former.

## **Part I**

### **Velleman's Account of a Person's Dignity, Good, and Interests**

Velleman claims that our possession of dignity prohibits our destruction on the basis that it would be in our interest to die. He argues that it would be immoral, even incoherent, to destroy a creature of great value on the basis of interests in avoiding discomfort, boredom, failure, physical

dependence and other burdensome conditions that make our lives go less well. These interests are of derivative value and can't provide a justification to destroy the very source of their value, the person. To appreciate this argument we must understand the relationship between an individual's value, good and interests.

Velleman contrasts the person's value with the person's good or well-being. It makes sense to care about the good of a person only if one values that person. So it is reasonable that a person should care about his own good only if he cares about his value as a person. Velleman illustrates this point with a story about someone who after doing something horrible, loathes himself for he thinks himself worthless (Velleman 610). As a result, he ceases to care about his good. He can realize that certain things are in his interest, but since he doesn't value himself, he doesn't value his interests. So if a person does not matter, then his interests and his good don't matter. (Velleman 611)

The notion of intrinsic value is at the basis of Kant's moral theory and crucial to Velleman's account. As readers know, Kant calls this value "dignity" and argues that morality requires that we respect people's dignity. We possess dignity because we possess the property of personhood, i.e., our rational moral agency. Kant insisted that morality isn't possible without a belief in the dignity of the person. If a person doesn't have value, nor do his good and interests. Velleman believes that this might sound like the religious notion of the sanctity of life but what he wants is a secular substitute for the sanctity of life. He finds it in our personhood. This is the foundation for morality. It is this intrinsic value or dignity that morality will honor and protect.

Velleman emphasizes that respect for people's intrinsic value is not the same as respect for human beings. Being a rational person involves having a mind of a certain sort and some human beings don't possess those traits. A mindless fetus is not a rationality possessing person so respect for persons doesn't render abortion immoral. Thus Velleman insists that respect for the intrinsic value of persons doesn't mean such respect is owed to all human life. Dignity is what Kant calls an "self-existent value," one we don't have to bring into existence but must respect when it does exist.

However, Velleman doesn't deny that there are situations where someone should be helped to die. Velleman just objects to a person doing a cost/benefit analysis and declaring it is in his interest to die. Velleman insists that it is a form of practical irrationality to pursue what is derivative in a way that destroys or frustrates the very end it serves and that ultimately gives it value. Since one's interests have derivative value, they cannot be appealed to in order to deny or destroy the non-derivative value that is the very source of their conditional value. Demanding a right to die on the basis that it is in one's interest would be no more coherent than the Catholic Church or another religion establishing an ecclesiastical court and then this court trying to disband or undermine the church (or religion). The court's authority is derived from the church's. So it doesn't have the authority to abolish the church which is the very source of its authority. Replace the authority of the church and court with the value of the person and their interests, and you have the parallel incoherence of an interest-based right to die.

### **Velleman's Defense of Kantian Suicide for the Sake of our Dignity**

Velleman insists that respect for person's dignity doesn't rule out physician-assisted suicide and euthanasia. It just excludes certain arguments in favor of hastening death. It rejects trade-offs of one's dignity for pain relief. It prohibits what he calls "escapist suicide," where one dies to escape the burdens or frustrations or tedium of life. But if one can no longer live with dignity, then the death of such a person would not offend against his value. It wouldn't involve weighing his interests against his value. If a patient's value or dignity is deteriorating, then out of respect for it, death may be warranted.

Velleman points out that we often destroy objects of value or dignity when their value is under attack. Flags and books are destroyed or buried rather than allowed to continue to deteriorate. Honor guards have a ceremony for removing and destroying tattered flags. They don't leave the flag up until it is fully shredded. Likewise for books: religious Jews bury bibles that are falling apart. Velleman doesn't believe these things have *intrinsic* dignity like persons. But they all belong to the

“class of dignity values, whose defining characteristic is that they call for reverence or respect” (Velleman 617). The dignity of books or flags he claims is borrowed from the dignity of persons. I take that to mean the flag stands for the persons of the countries and their values and the books are an achievement of persons who wrote them and perhaps whose lives they describe.

Velleman writes that “dignity can require not only the preservation of what possesses it, but also the destruction of what is losing it, if this destruction is irretrievable.” (Velleman 617) He stresses that patient should die for the sake of their dignity, not because it is in their interest to be relieved of pain. Velleman points out that there is a difference between pain and suffering. Some people bear their pain well. Others disintegrate in the face of pain. The distress of disintegrating as a person is what Velleman means by “suffering” and that, not pain, “necessarily touches one’s dignity.” (Velleman 626) Individuals are not rational selves anymore when they suffer greatly for they can no longer engage in rational activity. They have lost and are losing value, so death to prevent this is not an offense against their value. The suffering may be due to unbearable pain as when one is distressed that most of one’s life has become restricted to a focus on pain relief. (Velleman 618) But one can also suffer without physical pain. Someone with dementia may be suffering for they can’t be rational agents anymore, or to the degree that they want. They no longer can reason well, recall things, and carry out their plans.

Velleman believes that a person’s decision to die would be premature if he possessed all his rationality and just wanted to avoid a future in which it would decline. If one was fully rational, it would be an offense to one’s dignity to hasten death. It is only when the dignity is under attack by the disease that death is not an affront to one’s dignity. Velleman describes patients in the earlier stages of dementia as being in the “Twilight of Autonomy.” Velleman speaks of the person then as being not fully a person but a person to a lesser degree. Such a “temporally scattered person” will have moments of lucidity followed by confusion. So paradoxically, when the person is rational, she doesn’t have a reason to die, but when she has a reason to die she is no longer competent enough to

fully recognize and appreciate it. So her choosing death wouldn't be autonomous or fully voluntary. She needs to be involved in the decision but her "self-determination is more of a shadowy presumption than a clear fact." (Velleman 619)

### **Only the Dignified can be Degraded**

I turn now to criticisms of Velleman's Kantian approach. Insults to dignity in the case of the tattered flag involve the coexistence of the value and the slight. The people that the tattered flag stands for or the values they hold dear coexist with the offensive and degrading treatment. The books that are burned or buried rather than allowed to disintegrate further co-exist with the divine author or the people the story is about or the values they represent. Slavery, perhaps the paradigm case of degrading the dignified, involves people being demeaned while they possess a great unappreciated value. Likewise, to degrade yourself is to act in a way not befitting your value. Value and the offense to it must co-exist. But this temporal co-existence isn't the case for the advanced Alzheimer's patient. So how is the survival of the Alzheimer's patient degrading if his value is gone or nearly gone? He used to be rational, he is no longer - or he is much less rational than he was. Thus if the disease has eroded the rationality and dignity of the patient then its persistence and effects cannot be an offense to the patient's value for that value is gone. At best, the injury or disease can be said to "attack" one's value at the outset but it soon removes one's value and thus is not an offense against any present value. Once someone's cognitive capacities have been undermined, there would be little or no *Kantian* value to be further offended unlike the case of the ongoing degradation of a rational human being who is enslaved and being treated like a farm animal.

Perhaps the degradation that Velleman has in mind is the suffering of persons earlier in the disease who are still sufficiently aware of themselves and distressed that they cannot act rationally. They retain some value in the Kantian sense for they are not devoid of rationality, and their remaining dignity enables them to feel distress when they are frustrated in their attempts to navigate their world. But I worry that the frustration is not really an offense to their value since a

considerable portion of it is gone and the patients are acting as someone with that level of reason should act. If they were undignified, so would be the mentally disabled who are distressed when their cognitive limitations frustrate them. We don't consider the mentally disabled, animals and children to be undignified when they act in a way that is to be expected and appropriate for them given their developmental stage or cognitive inability to do otherwise. We do find undignified those adults who misbehave and act like children when they are capable of acting otherwise.<sup>1</sup> But the demented could not act otherwise and so their behavior is not undignified.

Velleman's idea might instead be that the dignity attack consists of the patient being distressed by the prospect of the disease *further* eroding her value. She realizes she soon won't even be able to do what she now can do. The mentally disabled, animals and children are not facing the same decline. So it may be the awareness that more value will be lost that distresses the person and justifies our assisting them in dying. However, recall that Velleman thought that the killing of the rational before they lost their rationality would be to offend their value. It would be wrong even if they were *very distressed* by the prospect of their entering the twilight of autonomy. So to kill those losing value in order that they will not suffer distress from the prospect of losing more value seems to be liable to the same charge that it is too early if there exists enough value to motivate concern about one's future. Furthermore, if Velleman's idea is instead that after the onslaught of the disease that there is less dignity to offend by appealing to one's interests to die (Velleman 622 nt. 17), the earlier incoherence threatens to return. Given his account of interests being of derivative value, it seems that even a decline in the value of the demented would mean that their non-derivative value (the residual rationality) was being sacrificed for the derivative (an interest in dying).

Velleman can't mean that the offense is to the way the person *ought* to be. That would make it undignified and an offense to be mentally disabled from birth. Surely, Velleman wouldn't think

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<sup>1</sup>. See my \_\_\_ for some distinctions in usage between *undignified* and *not dignified*.

that the distress of the congenitally mentally disabled is a reason to hasten their deaths. We typically want the undignified to realize that their behavior is shameful. But we would not want the mentally disabled or the demented to be ashamed and believe it was a mistake to remain alive.<sup>2</sup> Yet Velleman's account suggests that at least the demented are making a mistake clinging to life and should be ashamed of that.

An alternative interpretation is that Velleman believes the patient ought to die because his condition is an offense to the way he *used* to be. That would spare the congenitally mentally disabled but provide a reason for others to die even when comatose for they are shadows of their earlier selves. But Velleman seems to indicate that there isn't a dignity-based reason in terminating the irreversibly comatose. He writes "The view stated in this essay is that assistance in dying is morally justified to spare the patient from degradation. This view could hardly justify withholding such assistance until there was nothing left to degrade." (Velleman 626) However, Velleman does suggest a thing can be offense to its past when he writes that 'the moral obligation to bury or burn a corpse, for example, is an obligation not to let it become an affront to what it once was.'" (Velleman 617)<sup>3</sup> But Aquinas and many others argue that the deceased human being doesn't persist as a corpse so *he* can't then be in a state that is an offense to his earlier exalted condition.<sup>4</sup> A corpse is not a dead man but merely his remains. These may warrant a certain respectful treatment but that is because they are *human* remains rather than implicate anything about the dignity of the deceased.

Nevertheless, while the idea of an offense to the way one used to be doesn't apply to corpses for metaphysical reasons, Velleman could extend the idea to comatose or childlike patients, arguing

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<sup>2</sup> See my \_\_\_ for a "shame test" for undignified.

<sup>3</sup> I take it that the word "it" in "it once was" refers to the corpse and the entity that it "once was" and thus is intended to identify the corpse with the earlier individual. If I point to an old picture of a fetal sonogram and say that "It is now a lawyer" or gesture at an old dog and say that "it was once a puppy" what is suggested, respectively, is that the lawyer is identical to the fetus and the older dog is identical to the puppy. However, perhaps Velleman's use of the impersonal "it" rather than "he" or "she" supports the objection of a referee that the phrase is to be understood as saying that the person has ceased to exist and is replaced by a thing.

<sup>4</sup> See my \_\_\_ and \_\_\_

those conditions are an offense to the way they were. But since the two states don't temporally co-exist like the slave and his degrading treatment, this is a very different type of dignity attack. I suspect it is being confused with patients wanting to be remembered at their best. If a patient requesting his own death so others wouldn't see him in such a state would not want to die if he would be unseen by those whom knew him prior to the coma or dementia, then considerations of dignity are not in play. His rationality-based dignity is just as far beneath what it was whether he's seen or unseen. Being remembered at one's best is like wanting to be photographed in a way that is flattering, neither invokes considerations of Kantian dignity.

Therefore it isn't clear to me that Velleman's framework can justify hastening death. But I think Velleman should worry even more that his account can't justify healing the extremely demented or comatose. Imagine that someone has been reduced to infancy or unconsciousness by their Alzheimer's disease. Why cure them by restoring their capacity for rationality, assuming we could? Although we don't presently have the means, imagining a future where we can reveals why the Kantian moral account of our dignity lying in our rationality is insufficient. Recall that Velleman had emphasized that respect for the dignity of persons is not the same as respect for human beings. Being a person involves having a mind of a certain sort and some human beings don't possess these traits. A mindless fetus is not a person so respect for persons doesn't mean abortion is immoral.<sup>5</sup> Velleman went out of his way to note that dignity is what Kant calls a "self-existent value," one we don't have to bring into existence but must respect when it does exist. But how is the comatose or infant-like human adult different from the fetus in a morally significant way? It is true that some comatose adults have rationality intact like I do when sleeping. But others don't, their injuries or diseases have left them more childlike or fetus-like. I have in mind the demented who lapse into

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<sup>5</sup> My concern in this article is with Velleman's view and whether it works internally, so it doesn't matter that others call the fetus a person or think that older fetuses have mind and thus are persons with unexercised capacities for rationality. Lee, George, Eberl, Oderberg and others refer to the fetus as a "person with potential" rather than a "potential person." Kaczor mention an "immature person," an analogue with a child's not yet functioning reproductive organs being immature reproductive organs. But Velleman is a Neo-Lockean and does not understand fetuses that way and he is my target.

coma. Some comatose patients may become conscious again but end up with childlike minds that have “stagnated”, i.e., are unable to develop with current treatments into healthy adult minds. In that way they are unlike healthy fetuses. All I need to criticize Velleman is a case in which the comatose Alzheimer’s patient can’t come out of the coma or illness with rationality superior to the late fetus or newborn. Since Velleman doesn’t offer dignity-based protection for fetuses, he can’t provide protection for the brain damaged whose pathologies can be cured in a hypothetical future where their brain’s healthy functions are restored. The “cure” could be either making them like a healthy fetus or newborn who will develop into a rational adult or could involve rewiring their brain so they possess adult-like rational brain structures even if the idiosyncrasies of their pre-Alzheimer’s mind is not restored.

It might be claimed that the patient once was rational and this entitles to respect that a fetus is not. But why should that matter when there is no remaining physical realization of that intrinsic value? Moreover, recall the earlier Velleman quote that the way one *was* gives us no reason to euthanize the comatose for there is no longer any value that is left to be degraded. So I don’t see why we would have any reason in Velleman’s framework to help the extremely demented or comatose who were minimally conscious or lapsed into a coma. It can’t lie in their *potential* for rationality for that is there in the fetus that Velleman claims lacks dignity. So the extremely demented either lack an interest in a cure or it doesn’t matter very much given their greatly diminished value.

## **Part II**

### **Dworkin’s “Life Past Reason”**

We have seen that the decision to die made during the “twilight of autonomy” will not be a fully autonomous decision as it isn’t authorized by someone who is determinately a person. That means that such cases of euthanasia will begin to resemble non-voluntary euthanasia. But a possible difference between the euthanasia that Velleman advocates and non-voluntary euthanasia is that the

patient could have made an advanced directive when competent and autonomous about how she would want to be treated within the twilight of autonomy. A natural suggestion is that an advanced directive could turn such deaths into voluntary euthanasia since there earlier was a recognition and endorsement of such reasons being applicable later. Dworkin offers such an account.

Dworkin's concern in the last two chapters of his book *Life's Dominion* is with the exercise of antecedent autonomy and the best interests of the severely demented. Dworkin concentrates upon what moral rights people in the late stages of dementia have and what is best for them. He discusses Andrew Firluk's famous account of Margo. Firluk met Margo while doing a medical school gerontology elective. She painted the same circles within circles every day, read randomly the same mystery novel, enjoyed peanut butter and jelly sandwiches, and the company of familiar people whose names she did not know. Firluk memorably described her "as one of the happiest people I know."

Dworkin states that those who were not always demented but became so can be thought of in two ways: a demented person, emphasizing their present situation and capacities; or as a person who has become demented, having an eye to the course of his whole life. Would a competent Margo - before the onset of dementia - have a right to dictate that later life-sustaining treatment be denied, even if, when demented, she pleads for it? It would obviously be incredibly difficult for a doctor to end the life of someone at a time when they presently don't want to die and seem to have no recognition of or interest in their earlier reasons to die – a disdain of a life without intellectual pursuits, a loathing of being dependent and a burden upon others, an inability to recognize loved ones, wanting to be remembered by friends and family in a certain way and so on. It might be thought to help if the doctor imagines the patient briefly regaining lucidity and complaining that her earlier wishes to die were ignored. Then if she lapsed back into dementia, this would elicit the belief that the doctor should heed a person's autonomous wishes not their demented wishes. But this

approach is very flawed. It involves the doctor imagining that the patient has interests that she doesn't actually have. I'll come back to this crucial point later.

### **Dignity, Rights and Dementia**

Dworkin observes that a person's dignity is normally connected to his capacity for self-respect (Dworkin 291). Dworkin asks should we care about the dignity of demented persons if he has no sense of it? He suggests that it "depends upon whether his past dignity, as a competent person, is in some way still implicated. If it is, we may take his former capacity for self-respect as requiring that he be treated with dignity now, dignity is now necessary to show respect for his life as a whole." (Dworkin 220-221)

Dworkin claims that the value of autonomy derives from the capacity it protects, the capacity to express one's own character – values, commitments, *critical* as well as *experiential* interests. Experiential interests are those that please us. Dworkin offers the following description:

We all do things because, we like the experience of doing them: playing football, perhaps, or cooking and eating well, or watching football, or seeing Casablanca for the twelfth time, or walking in the woods in October, or listening to The Marriage of Figaro, or sailing fast just off the wind, or just working hard at something. Pleasures like these are essential to a good life – a life with nothing that is marvelous only because of how it feels, would be not pure but preposterous (Dworkin 201).

Dworkin contrasts experiential interests with people's critical interests. He finds critical interests in some ways to be more important than experiential ones. He describes the former as the hopes and aims that lend genuine meaning and coherence to our lives. They express one's considered values, life story and commitments. Critical interests lead people to "want to make something, or contribute to something, or help someone, or become closer to more people, not just because these would be missed opportunities for more pleasure, but because they are important to themselves" (Dworkin 202). Dworkin writes of his own critical interests: "I feel that it is important

that I have a close relationship with my children...that I manage some success in my work...that I secure some grasp, even if only desperately minimal, of the state of advanced science of my era.”

(Dworkin 202)

Dworkin believes that respect for autonomy means we must carry out someone’s advanced directive or honor antecedent intentions that they made on the basis of their critical interests.

Respecting autonomy protects a person’s judgment about the overall shape of the life he wants to live. It allows people to live their own lives rather than be led along by their circumstances.

Recognizing an individual’s right to autonomy makes self-creation possible, so each of us can be what we have made of ourselves. We even allow someone to choose death over amputation or blood transfusion, if that is his informed wish, because we acknowledge “his right to a life structured by his own values... Autonomy encourages and protects people’s general *capacity* to lead their lives out of distinctive sense of their own character, a sense of what is important to and for them.”(224)

One principal value of that capacity is realized when people live a life that displays a general, overall integrity. Dworkin observes that “Integrity is closely connected to dignity. Moreover: we think that someone who acts out of character...shows insufficient respect for himself.” (Dworkin 205)

### **Precedent Autonomy**

Dworkin understands precedent autonomy as a version of integrity-based autonomy.<sup>6</sup> To see how integrity-based precedent autonomy operates, imagine that the incompetent patient earlier executed a living will providing for what he clearly doesn’t want now in his debilitated state. Suppose that Margo left instructions to give all her property to charity so it couldn’t be spent on her care or that she requested no treatment for any life threatening disease she might contract. Or imagine that she requested to be killed as soon as possible once dementia manifests to a certain degree. Wouldn’t respecting autonomy then require her autonomous wishes be carried out despite the pleasure she got

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<sup>6</sup> He contrasts integrity-based autonomy with what he calls the *evidentiary account of autonomy*. This account suggests recommends that we respect decisions of others that appear imprudent because each person generally knows what is in his own best interests.

from various activities like drawing, eating peanut and butter and jelly sandwiches, and reading her dog-eared mystery novel?

The integrity view supports the view that past wishes must be respected. Advanced directives can be understood as judgments about the overall shape of the kind of life one wants to have led. Someone may object and instead claim that autonomy is necessarily contemporary, i.e., only present decisions, not past ones relinquished, should be respected. Dworkin says that's fine for the competent. But imagine a Jehovah's Witness who demands no blood transfusions for that will cut him off from God for all eternity. Suppose the accident that created the need for blood also deranged him and he pleads to be transfused. The doctor agrees to transfuse him. Then when the Jehovah's Witness becomes lucid, he is outraged and insists that his autonomous wish was disregarded. Dworkin agrees with his charge. His former decision remains in force because no new decision by a person capable of autonomy has renounced it. It is not because the Jehovah's Witness will later regret his choice to transfuse. If the Jehovah's Witness was competent at the time and in a moment of cowardice, demanded the transfusion, he might certainly later regret it. But the difference is that is a change of mind of the competent. He was competent, however weak, at the time of the change of mind. Respecting his autonomy demands this change be respected.

Dworkin says that if we respect the wishes of the patient in a persistent vegetative state, and courts have ruled that states must, then we have the same reasons not to keep alive those who dread dementia rather than unconsciousness. Dworkin admits that there are troubling consequences. Could we deprive of life, even kill, a rather content Margo? He admits that there might be reasons not to. But he insists that they still would violate her (precedent) autonomy.

### **Objections to Dworkin's Accounts of Critical Interests**

My contention is that most of the critical interests of persons don't survive their dementia. Consider an updating of Parfit's Combined Spectrum thought experiment (Parfit 283). A brilliant evil neuroscientist has rewired your colleague's brain, arranging his neurons in the way that Michael

Jackson's were arranged. Your colleague no longer has interests in, say, philosophy, classical music and waltzing but now shares the musical tastes of the King of Pop and likes to break dance. Your rewired colleague no longer wants to live in a college town but yearns to move to Jackson's *Neverland* ranch. The neurological structures that have been destroyed were the physiological basis for many of his critical interests. Those earlier critical interests that were contingently acquired and idiosyncratic to your colleague don't remain. Dementia is equivalent to the evil scientist "unravelling" your colleague's neurological connections but not "rewiring" them in the manner of Michael Jackson. The interest in, say, doing philosophy or composing music or living an independent life are destroyed by the disease.

Since the demented have had their earlier interests removed, I don't think there are any antecedently autonomously generated interests remaining to be respected. It is not just that the demented can't recognize and act in accordance with their critical interests, but they don't have them any anymore. They are not like the above Jehovah's Witness or you when asleep and still retaining interests of which you are not aware at that time. You can wake and live in accordance with those interests. Your interests are still realized or supported by your brain in some sense. How your brain does this is barely understood but most of us assume it does. Moreover, it seems that congenitally damaged brains (retarded from birth) don't acquire such sophisticated intellectual interests in philosophy, composing, achievement, morality etc. Likewise, damaged brains don't retain their support of such interests and those interests are no more. The demented have lost the "higher" interests and only more childlike interests remain (or the more childlike interests are new).

This loss of critical interests would be especially problematic if Dworkin were right that "A person's right to be treated with dignity, I now suggest, is the right that others acknowledge his genuine critical interests." (Dworkin 236) If I am right about the disease destroying the patient's critical interests and Dworkin is correct on their importance to dignity, then the late term Alzheimer's patient will have undergone a dramatic decline in dignity. Recall the earlier quotes in

which Dworkin ties dignity to autonomy and integrity; The critical interests that were generated from the autonomous self are a manifestation of that autonomy and integrity depends upon them. So if someone's critical interests are destroyed and there remain no autonomous capacity to generate new ones, a life with integrity in Dworkin's sense is no longer possible. Dignity will be diminished if there are no autonomous capacities nor autonomously produced interests essential to a life with integrity. More surprising is that late in the disease, such patients lack an interest in a cure. The basis for their critical interests is gone and they lack an experiential interest in a cure when they are infant-like or comatose. This suggests something has gone very wrong in Dworkin's discussion of our interests and dignity.

However, a reader may imagine the following scenario in which some people suffer severe dementia and no longer recognize any critical interests. Now suppose that there are two cures for their dementia, one will restore their capacities and interests to the way they were before (they were philosophers), and the other will restore their normal functioning but it will be random as to what type of life they subsequently prefer after the procedure. The reader's intuition may be that the individuals should be restored back to their former selves, and the only plausible way to explain this intuition is to claim that they "still carry some weight".<sup>7</sup>

My first response would emphasize that this view seems to be in tension with some sort of physicalism that I expect most readers assume about the basis of those critical interests. They would not believe that individuals had such critical interests when they were children prior to the experiences that formed them. Such individuals have not been exposed to the circumstances where their brains were transformed to realize (support, store) the resulting critical interests. But if the damaged brain of the adult is imagined to be structurally and functionally like that of the child, why think those interests are retained in an adult brain that is very childlike?

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<sup>7</sup> This objection was put forward by an anonymous referee.

A second response is to suggest that what may be motivating readers to restore the physical basis of the brain damaged may not be a belief that the critical interests persist but just confidence that the person would do well and thrive with those interests. He once had those interests and probably was fairly successful in fulfilling those and enjoyed their pursuit. To see this, imagine that a clone of a healthy adult is made. That clone starts out as a fetus, develops into a new born, and so on. Imagine that it suffers brain damage as a newborn and continues to grow physically but not mentally. The individual never developed any critical interests. Years later, the individual has the mind of a baby in an adult body. Then scientists discover how to rewire damaged brains but there are only two options: make him an athlete like the being from which he was cloned or turn him into a poet. I think it would be very wise for them to rewire the brain in a manner of the individual that the patient is a clone. We know that the individual's body and physiology etc. could thrive with such interests. The interests would be a good fit. We know the rest of the brain would fit well with the athletic interests and so forth. But the decision obviously has nothing to do with earlier critical interests of the patient since he never had any. Rather it is a safer bet. He will do well, the interests will fit his physiology, his body type, mesh well with the other already structures in his brain etc.

### **An Alternative Account of Moral Status**

The same reasons that leave me skeptical of those philosophers who defend abortion and infanticide on the grounds that that newborns and the unborn lack the interests necessary for a right to life make me skeptical of any view that implies the demented or comatose don't have interests in being cured. I think such philosophers fail to distinguish *something being in an individual's interest* from that *individual taking an interest in something*. Moreover, it is important to realize that there are things in their interests that are contingently so and others that are necessarily so. The contingently so depend upon the idiosyncrasies of the person's development. For instance, Dworkin maintains that "Critical interests are personal...not a discovery of a timeless formula, good for all times and places, but as a direct response to our specific circumstances of place, culture and capacity." (Dworkin 206) So

critical interests aren't possessed by the mindless or minimally-minded young, and I have argued that the elderly don't retain such interests after disease has eradicated the brain states wherein they were physically realized. Dworkin fails to recognize that we possess necessary as well as contingent interests. Velleman may either not recognize what are necessary interests or wrongly think that they don't matter because they aren't the interests of a rational person.

It is in the fetus's, infant's, comatose and demented's interests to live on even though they may not have taken an interest (i.e., desire) to live further into the future. Analogously, vegetables are in a child's interest even when he's not interested in them. All living things have an interest in healthy development. We can ascribe interests to potential persons, even mindless ones, to live and develop in a healthy fashion by which they will flourish. It may even be that consciousness evolved to promote the same well-being that organisms had previously furthered without awareness of doing so. Regardless, if one doesn't accept that non-sentient beings can have welfare interests then one won't be able to explain the harm of lapsing into a coma or the benefit of coming out of a coma for harms and benefits involve changes from one level of well-being to another, not a move to or from the absence of any well-being.<sup>8</sup>

Even blades of grass can be said to literally thrive and thus have an intrinsic well-being and a non-metaphorical interest in sun and nutrient-rich soil. Despite having interests, a blade of grass has a future that isn't very valuable, so its interests and flourishing are given far less moral weight than those of human beings. Assuming that the degree of the harm of an entity's death depends, in part, upon the value and extent of the well-being that it loses out on, the grass is harmed very little. A healthy human fetus, on the other hand, has the potential to realize mental capacities of considerable value that will enable it to obtain levels of well-being unrivaled by other kinds of creatures. Creatures

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<sup>8</sup> There is a difference between the absence of or no well-being on the one hand, and zero or low-level well-being on the other. We were all devoid of any level of well-being, even zero, before we existed and that explains why coming into existence isn't a benefit. The comatose have zero or low well-being, unlike the non-existent and inanimate with well-being.

with minds like ours are liable to obtain greater benefits and suffer greater harms and thus have more value than living things that are not capable of such thoughts and emotions. Even unhealthy fetuses and demented adults have a potential that accounts for their moral status. It may be that the harm is preempted or overdetermined by disease, but then the harm should be considered the combination of the disease and death, what McMahan calls “Total Harm” (McMahan 2002) and Neil Feit labels “Plural Harm.” (Feit 2013). Killing the incapacitated contributes to the total or plural harm that the patient suffers.

My contention is that the morally relevant sense of potential is determined by what is healthy development for things of that kind. Human fetuses, the congenitally mentally disabled and the demented have the potential to develop minds of great cognitive and affective abilities.<sup>9</sup> The healthy realization of these abilities will enable them to enter into various rewarding relationships and exercise a range of cognitive skills that empower them to think and act in valuable ways unlike any other kind of living being. So their potential means that they’ll be greatly harmed if deprived of that valuable future. Causing the death of the terminally diseased is being responsible for a component of the overall plural or total harm.

Mindless or minimally minded organisms only have interests in healthy development or proper functioning and the flourishing that involves. So a healthy embryo or retarded child has an interest in growing a healthy proper functioning brain but no interest then in becoming a tennis player even if it will later be an adolescent dreaming of Wimbledon fame. Likewise, the demented no longer have an interest in athletic fame, undertaking philosophy, being independent of care givers, or any other contingent interests that they acquired in their socialization. It isn’t enough for a mindless or minimally minded entities to be identical to earlier or later rational beings to presently attribute to

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<sup>9</sup> It is true that fetuses and the congenitally mentally disabled and demented have potential in different ways. But they would all be rational if they were able to develop in a healthy manner and stay in a healthy state. So how they differ doesn’t matter. My point is that the morally relevant sense of potential has to do with healthy development. So what is important is that first, if they were healthy they would be or become rational and secondly, that they have an interest in their health.

them the interests that they possess at other times. The earlier or later good must be in the mentally unsophisticated beings' interests when they are mindless or minimally minded. And the only basis I can see for ascribing interests to the mindless is by appealing to the good realized by their proper functioning, i.e., healthy development for entities of that kind. Health is a *necessary* condition for flourishing and constitutive of a good deal of valuable well-being in a healthy person. The living will *always* have an interest in health-produced flourishing. All flourishing depends upon health being present (to some) degree and every living being has an interest in health at every stage of their lives, including their geriatric or embryonic stages. When mindless, there's probably nothing else to their prudential good and flourishing than their health.

I am open to there being non-organic *conscious* entities that have (non-derivative) interests. My claim is just that the only mindless entities with interests are organic, i.e. alive. Of course, the closer the machine comes to self-maintaining, the more it will seem to have something like well-being. A Roomba vacuum cleaner seeks out dirt and then returns to its home base to “nourish itself” by recharging.<sup>10</sup> But it is still very distant from an organism that maintains itself, growing, healing and replacing parts to serve its ends. Living beings make adjustments to stay alive, they have to do such and such to keep their gases, temperature, chemical balances etc. They can do it better and worse, and as a result remain alive and thrive or fail and die. Because they have this self-directed range in which they can safely pursue their ends we can say they have well-being as things go better or worse for them. Artifacts only have derivative functions and don't internally maintain themselves in pursuit of their self-given ends. We could use the Roomba for something else and it would cease to function as a vacuum but would then become say an entity upon which to hang clothes. It wouldn't be malfunctioning if it then later came about that it could no longer clean carpets. Its function could easily change because its function was always derivative upon our intentions. We can

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<sup>10</sup> An anonymous referee presented the Roomba as a challenge to my position that only organisms had well-being and interests.

speaking metaphorically of it acquiring an interest in supporting clothes just like we can speak metaphorically of a car having an interest in oil. But the vacuum cleaner and the car lack non-derivative interests and, perhaps more importantly, lack sufficient internal self-maintenance in pursuit of those ends, and so lack well-being. The Roomba's being recharged or used as a sturdy clothes rack aren't good for it. But if we used the tree for something like a clothes rack, its earlier health oriented functions don't change. We don't say the tree does better or worse, flourishes more or less, when it supports clothes better in the colder seasons when it is without leaves. The tree does better when its organic health improves and worse when its health declines. Since its interests are not derived from ours, and it maintains itself in pursuit of its self-given ends, it can literally be said to have a well-being.

The appeal to healthy development as the morally relevant potential renders unnecessary any appeal to the distinction between active and passive potential or the equally problematic intrinsic and extrinsic potential. Anyway, the appeal to active or intrinsic potential wouldn't divide up cases as their proponents want. There's no active or intrinsic potential for (Lockean) personhood in demented adults, anencephalic, or congenitally retarded human fetuses, but they would surely have priority over a healthy kitten to receive a *scarce* serum that made personhood possible for them. We can imagine both that the congenitally mentally disabled lack a gene necessary for development and that dementia could be caused by a mutation or absent gene. Neither the fetus nor the extremely demented would then have the active or intrinsic potentiality needed for health if they were missing the requisite genes. The fetus wouldn't develop by its own powers in its normal environment or even with normal interactions from the environment. There are not even obstructions to remove as when some genes activation is blocked by some other factors. I don't see how active or intrinsic potential can be doing any work in the case of the anencephalic or congenitally cognitively disabled who are missing genes or have mutated genes. To claim it does is to lose sense of the distinction between active and passive (or intrinsic and extrinsic) potential. One can claim that active potential

just means that identity is preserved when it undergoes changes. But it typically is the case that active potential means that if the entity is put in its normal environment it will develop - or at least will develop if some obstacles are removed.<sup>11</sup> Of course, one can insist that the soul is there and just blocked and active potential lies in the existence of the human soul. But that won't have any purchase on the non-soul theorist who wants to use the active/passive distinction. And even most modern Thomists typically refer to the presence of the (soul configured) genome to explain a fetus's active potential. Eberl writes in a manner updating Aquinas "The contemporary understanding of DNA, however, places the formative power in a zygote or early embryo itself. This fact would arguable motivate Aquinas to define a zygote or early embryo as having an active potentiality for rational operations, since it has an active internal principle to develop the requisite organs for such operations to occur." (29)

McMahan shows the moral insignificance of the active/passive potential distinction by pointing out that it isn't plausible that a human fetus's moral status would drop and then return if its earlier active or intrinsic potential for personhood was lost but then restored by a genetic therapy. But if we appeal to healthy development as the morally relevant potential then the intrinsic or extrinsic source of the development is irrelevant. What is doing all the work, whether there is active (intrinsic) or passive (extrinsic) potential involved, is healthy development. And healthy potential need not be active or intrinsic. So it isn't intrinsically manifested traits in which lies our moral status. Rather, our dignity depends upon the kind of being that we are. That is, it depends upon how we are designed to be.<sup>12</sup>

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<sup>11</sup> Kaczor (p 24) understands "active potential is nothing other than growth or maturation, an active self-development." The demented and congenitally cognitively impaired don't have active potential in Kaczor's sense.

<sup>12</sup> Valuable aspects of our design may not be essential to us. It may be that our species could remain the same species but evolve in ways that the functions of our brain change, previous value-bestowing mental functions becoming vestigial like those functions of our appendix. See Plantinga's (194-215) discussion of this possibility for a position like mine own. That kind of event, farfetched though it is, could lead to a change in our value. So I am not appealing to our essence, that which we couldn't survive the loss, but merely to what is healthy development, i.e. proper medical function which is determined in part by what historical and thus extrinsic. This distinguishes my treatment of the disabled's moral status from those like Lee, George and Kaczor who stress our substantial nature. They appeal to the nature of the species, I

Once we recognize that the harm of dementia depends upon comparing our present state to the way we should be if we develop in a healthy manner appropriate for our kind, we can easily see why the infant-like demented have greater moral status than any nonhuman animals like cats that might be cognitively equivalent to demented humans. The former are susceptible to a range of serious harms and extraordinary benefits far more significant than anything that cats are susceptible to; so infant-like patients can be the source of stronger reasons for respect and concern than cats can be. The demented's moral status is *raised* above that of cats by their potentiality which depends upon the kind of being that they are. Their dignity lies in the developmental potential of their kind. It is wrong to kill demented humans when they want to go on living even if they have written in their advanced directive to do so. Their interest in their healthy potential doesn't disappear with contingent interests in say sports or literature or philosophy or independence. It is an interest that they always have; it is necessary condition for flourishing. Babies have it but aren't conscious of it. The demented have the same interest in a return to health but may not realize it. And they preserve that interest even when the destruction of their brain removes any contingent critical interest in ceasing to live when, say, dependent upon others or unable study science or philosophy or write poetry. If Margo ever had those contingent critical interests, they are gone.

If Margo's moral status was due to her possession of rationality, contingent critical interests or experiential interests, we wouldn't have any grounds based on her interests to cure her of her dementia with a scarce serum rather than make a cat into a person. But surely we ought to restore personhood to the Alzheimer's patient or bestow it for the first time on the congenitally retarded human beings. They are supposed to be rational persons. That is the kind of entity that they are.

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appeal to a kind's capability to develop in a healthy manner which could be determined by just the species for a period of its history or even by a reference group that is smaller than the species. It all depends upon what is the best account of health.

In conclusion, Velleman and Kant are right that your value is the same as others. To disrespect the value in yourself is to disrespect it in others. To disrespect it in others is to devalue it in oneself. A duty not to kill oneself has the same basis as the duty not to kill another. Their mistake is just that they located your value in the wrong place. It lies in not in manifested mental capacities but being the kind of entity that will manifest such valuable capacities and has an interest in doing so.

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